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In the Supreme Court
OF THE
United States

OCTOBER TERM, 1938

No. 704

AMERICAN TOLL BRIDGE COMPANY, a Corporation,
Appellant,

vs.

RAILROAD COMMISSION OF THE STATE OF CALIFORNIA, WALLACE L. WARE, FRANK R. DEVLIN, RAY L. RILEY, RAY C. WAKEFIELD, and LEON O. WHITSELL, as Members of and Constituting the Railroad Commission of the State of California,
Appellees.

BRIEF FOR APPELLEE.

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BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

This appeal is from a judgment rendered by the Supreme Court of California on September 27, 1938 (R. 122; 96 Cal. Dec. 367), affirming a decision and order of the Railroad Commission of California entered February 8, 1938 (R. 31) prescribing the rates or tolls which should be charged by appellant, American Toll Bridge Company, in

the operation of its toll bridge across the Straits of Carquinez at the upper portion of San Francisco Bay.

The errors assigned (R. 197), although eight in number, may fairly be reduced to three contentions as follows:

1. That appellant possesses a franchise granted by the Board of Supervisors of the County of Contra Costa, California, to maintain and operate a bridge over the Straits of Carquinez, which franchise, "including provisions of existing statutes", namely, sections 2845 and 2846 of the Political Code of California, constitutes a contract protected against impairment by section 10, Article 1 of the Constitution, should the Railroad Commission of California or any public authority attempt so to reduce its rates as to conflict with the terms of these Political Code sections. Appellant's claimed construction of the Code provisions is that tolls may not be reduced unless it first appear that existing tolls are yielding an annual return in excess of 15 percent upon a rate base established in such manner as the Code provides.

In reply to this contention, we shall show presently that the alleged rate contract does not exist in fact, and that no power was possessed by either the County Board of Supervisors or by the Legislature itself to make any such rate contract which might not be subject to revision or repeal.

2. That appellant has been denied a right guaranteed by the Fourteenth Amendment of the Constitution of the United States in that the action of the Railroad Commission of California prescribing bridge tolls did not conform to the requisites of due process in a procedural sense. This assertion is based upon the ground that the Commission instituted an investigation as to the reasonableness

of tolls without filing a specific complaint; did not, prior to the decision rendered, advise appellant of its proposals; did not make requisite findings; and that the Commission's action prescribing tolls for the Carquinez Bridge alone would have the "inevitable effect", "by force of competition", of reducing tolls upon another bridge owned and operated by appellant known as the Antioch Bridge

In reply to these contentions we shall show that there is no legal or equitable basis for such claimed violation of the due process clause, either in the procedural steps taken by the Commission to prescribe tolls, or in the judicial review of the Commission's action thereafter accorded appellant. It will be demonstrated also that there has been no failure of due process in a substantive sense.

3. That the Commission's rate order is confiscatory of appellant's property in both said bridges.

In reply to this charge it will be shown that the Commission allowed and correctly estimated a rate of fully 7½ percent upon the value of the Carquinez Bridge property, after making provision for all expenses of operation and expense for the full depreciation of property within the franchise period.

THE PROCEEDINGS BELOW.

In 1937 the Legislature of California amended Section 2(dd) of the Public Utilities Act (Statutes 1915, p. 115, as amended; Deering's General Laws of 1937, Act 6386, p. 3119). to add the italicized words in the paragraph following:

> "The term 'public utility', when used in this act, includes every common carrier, *toll-bridge corporation*,

pipe line corporation, gas corporation, electrical corporation, telephone corporation, telegraph corporation, water corporation, wharfinger, warehouseman, and heat corporation, where the service is performed for or the commodity delivered to the public or any portion thereof. (Amended 1937, ch. 896.)"

The said Public Utilities Act empowers the Railroad Commission to fix reasonable rates applicable to all classes of utilities therein designated, and otherwise to regulate their operations. The above mentioned amendment became effective August 27, 1937.

The Railroad Commission thereupon instituted, upon its own motion, an investigation sufficiently broad in its scope to include the reasonableness of the rates as well as the practices and facilities of the four private toll bridges within the State. (R. 27.) The American Toll Bridge Company was named as a respondent and as the owner and operator of two such bridges, the Carquinez and Antioch bridges.

Later, on October 4, 1937, the Commission, upon its own motion, instituted a separate investigation into the reasonableness of the rates charged by the American Toll Bridge Company on the Carquinez Toll Bridge. (R. 30.)

Thereupon, the two cases thus instituted by the Commission were set for hearing before one of the five members of the Railroad Commission. The American Toll Bridge Company appeared. It made no objection whatever to the jurisdiction of the Commission to proceed in either case, but stated that it believed it equitable that the rates of its Carquinez Bridge be not considered separately but in conjunction with the rates of its Antioch Bridge, and,

accordingly, it presented a motion to that effect. (R. 203-207.)

A large record was then made. Evidence was directed to the subjects of property value, revenues, expenses and needed return. At the conclusion of hearings, the matter was submitted for the Commission's decision without further argument or filing of briefs. (R. 530.)

The Commission's decision (R. 31-40) was directed to the evidence thus presented. Its order prescribed reductions in rates for the Carquinez Bridge alone.

From this decision and order the American Toll Bridge Company sought a rehearing (R. 40), as the Public Utilities Act provides must be done if the right to obtain a judicial review is to be preserved. (Public Utilities Act, supra, secs. 66, 67.) It was in that petition for rehearing that the claim of a franchise contract right to have its tolls not diminished at all unless it should appear that they yielded a return in excess of 15 percent was first declared. The Commission denied a rehearing.

Upon petition then presented by appellant to the Supreme Court of California for a review of the Commission's order, the Court granted the petition, and suspended enforcement of the Commission's order pending review. The entire record made before the Commission was filed with the Court. The matter was fully briefed and orally argued. The Court's opinion (R. 122-141) fully affirmed the Commission's action in respect to the reasonableness of the rates fixed for the Carquinez Bridge as well as its action in refusing to include the Antioch and Carquinez bridge properties together as a single rate-making unit. And the Court rejected appellant's plea that its alleged franchise rate contract had been impaired.

IMPAIRMENT OF CONTRACT.

It seems perfectly clear that the State action or statute which appellant asserts to have resulted in an impairment of its alleged contract is the rate-fixing order of the Railroad Commission. It is not the legislative act giving to the Commission the power to regulate its rates. Appellant does not deny that the Commission has some jurisdiction over its rates. It is conceded that the board of supervisors of the county which granted its bridge franchise possessed such rate-fixing power.

But appellant does contend that the Legislature had conferred upon county boards of supervisors only a limited power to regulate toll bridge rates; that by virtue of certain provisions of the Political Code, the counties could not fix rates unless the earnings exceeded 15 percent annually upon a valuation ascertained by the prescribed formula set forth in the Code. Such claimed statutory limitations upon the regulatory powers formerly committed to counties, existing at the time appellant obtained its franchise from the County of Contra Costa, are alleged to continue now to circumscribe the Railroad Commission since the Legislature transferred the rate-making authority from the counties to the Commission.

But let it be made entirely clear that it is not such franchise itself which appellant asserts to constitute a rate contract. That franchise (R. 269-277), it is true, did mention the rates to be charged, but the franchise also declared that the Railroad Commission should fix the rates. The franchise on its face does not purport to be a rate contract.

So it must be perfectly evident that the contract which appellant asserts to be impaired is nothing more than the claimed right to demand that the Legislature shall not, at any time during the franchise period of twenty-five years alter the general laws respecting public control of toll bridge rates.

With this preliminary analysis of appellant's claim of contract impairment, let us examine more closely the exact statutory provisions upon which it relies.

SUMMARY OF CODE PROVISIONS RELATING TO TOLL BRIDGES.

Before the Supreme Court of California, and now before this Court, appellant cites and relies upon just two sections of the Political Code of California, sections 2845 and 2846. It quotes such sections as they stood on February 5, 1923, when the Carquinez Bridge franchise was granted to its predecessor, the Rodeo-Vallejo Ferry Company, as follows:

> "Sec. 2845. The board of supervisors granting authority to construct a toll-bridge or to keep a public ferry, must at the same time:
>
> * * * * * * *
>
> "2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three nor over one hundred dollars per month, payable annually.
>
> "3. Fix the rate of tolls which may be collected for crossing the bridge or ferry, *which must not raise annually an income exceeding fifteen per cent* on the actual cost of the construction or erection and maintenance of the bridge or ferry for the first year, nor

on the fair cash value together with the repairs and maintenance thereof for any *succeeding year.*" (Italics supplied.)

"Sec. 2846. The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the Board of Supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge or ferry. The license tax fixed by the Board of Supervisors must not exceed ten per cent of the tolls annually collected."

Let it be pointed out that the above quoted Code sections upon which appellant relies as creating a contract obligation upon the part of the State, remained unchanged since the time of the adoption of the Codes in 1872. We presently shall call attention to earlier statutory precedents with which these Code provisions may be compared. They must be considered, also, in the light of associated sections contained in Chapter IV of the Political Code applicable to "public ferries and toll-bridges". Three of these at least should here be quoted.

"Sec. 2848. Whenever the board of supervisors are about to fix the license tax and rate of tolls on a bridge or ferry they must make inquiry into the present actual cash value and the cost of all necessary repairs and maintenance thereof, and for that purpose may examine, under oath, the owner or keeper of the same, and other witnesses, and the assessed value of the bridge or ferry on the assessment-roll of the county. When the estimate of the board is made,

if the same is not agreed to by the owner or keeper of the bridge or ferry, the same must be fixed by three commissioners, one to be appointed by the board of supervisors, one by the owner and keeper, and the third by the county judge, who must hear testimony and fix such value and cost according to the facts, and report the same to the board of supervisors under oath. In all estimates of the fair cash value of the bridge or ferry the value of the franchise must not be taken into consideration."

"Sec. 2849. When the cost of construction or erection and equipment of the bridge or ferry, or the fair cash value thereof, together with the cost of needed repairs and the conduct and maintenance of the same, is ascertained and fixed for the preceding year, the board must on such ascertained amount fix the annual license tax rate of tolls, and the amount of the penal bond, and direct a license to be issued by the clerk."

"Sec. 2878. * * * When a bridge is completed, and a certificate that it is so, and is safe and convenient for the public use, is signed by the commissioner of highways or president of the board of supervisors, and filed in the county clerk's office in the county or counties in which it is located, the directors or owner may erect a toll-gate at such bridge and require such tolls as the boards of supervisors of the county or counties from time to time prescribe. * * *."

LEGISLATIVE HISTORY OF CODE SECTIONS.

The legislative background of the above Political Code sections relating to toll bridge franchises may be traced to general statutes enacted as early as 1850. We should

refer to some of these, beginning with the Statutes of 1855, page 183, wherein it is provided that:

> "The Board of Supervisors shall establish the rates of toll to be charged and received for crossing all licensed ferries and toll bridges, * * *."

Thereafter, by Statutes of 1862, page 247, the following was enacted:

> "Sec. 1. The Board of Supervisors of each county of this State shall have the power to grant a license to construct a toll bridge across any unnavigable stream in their county, and for using and maintaining such bridge for a period not exceeding ten years; and said *Board shall have the power to prescribe the rates of toll, and change the same from year to year, as in their discretion may seem proper; but shall not fix them so low as to make the net income less than fifteen per cent per annum upon a fair valuation of such bridge.* * * * All the provisions of the Act to which this is supplemental, except that which limits to one year the terms for which a license may be granted for a toll bridge, shall apply to all grants under this Act."

Then, by Statutes of 1863, page 720, there was an amendatory act reading as follows:

> "Sec. 1. The Board of Supervisors of each county in this State shall have power to grant a license to construct a toll bridge across any stream, not navigable, in their county, and for using and maintaining such bridge for a period not exceeding twenty years, or to grant a license to keep, use and maintain a public ferry across any river or stream, for a period not exceeding ten years; *and said Board shall have power to prescribe the rates of toll, and change the*

same from year to year, as in their discretion may seem proper; but previous to the first day of January, eighteen hundred and seventy-three, they shall not fix said rates so low as to make the net income less than twenty per cent per annum upon a fair valuation of such bridge or ferry and franchise; and thereafter, not less than ten per cent per annum upon such valuation, which shall be made at the same time in each year when the tolls are fixed. * * *."

And again, even on the very next day (Statutes of 1863, p. 758), the Legislature amended Section 19 of the Act of 1855, above quoted, to read as follows:

"Sec. 19. The Board of Supervisors shall establish the rates of toll to be charged and received for crossing all licensed ferries and toll bridges, *but such tolls shall not be fixed at a rate so low as to make the net income to the owners thereof less than twenty-four per cent per annum on the assessed taxable value* of such ferry or toll bridge, and such rates shall be posted up, either written, printed, or painted, at each licensed ferry or toll bridge in the State, by the owner thereof. * * *."

And once again, before the codification of the laws in 1872, the Legislature (Statutes of 1869-70, p. 887) amended Section 1 of the acts of 1862 and 1863, above quoted, to read as follows:

"Section 1. The Board of Supervisors of each county in this State shall have power to grant a license to construct a toll bridge across any stream, creek or slough in their county, and for using and maintaining such bridge for a period not exceeding twenty years, or to grant a license to keep, use and maintain

a public ferry across any river or stream for a period not exceeding twenty years; *and said Board shall have the right to prescribe the rates of toll, and change the same from year to year, as they may think proper but previous to the first day of January, eighteen hundred and seventy-three, they shall not fix the rates of toll* over any bridge or ferry constructed or licensed under the provisions of this Act *so low as to make the net* (income) *less than twenty per cent. per annum upon a fair valuation of such bridge or ferry and franchise, and thereafter, not less than ten per cent. per annum upon such valuation, which shall be made at the time in each year when such tolls are fixed.* * * *"

THE LANGUAGE OF THE CODE SECTIONS IS THAT OF REGULATION AND NOT OF CONTRACT.

The brief references above made to the various Code sections and to their legislative precedents sufficiently demonstrate a legislative intent to empower boards of supervisors continuously to regulate toll bridge rates.

Contrary to appellant's contention that the adoption of the Codes of 1872 definitely established a policy of contract, the language of the Code provisions would indicate a substantial change in the policy manifested in preceding statutes. Whereas the earlier laws definitely had directed the boards of supervisors not to fix rates prior to the year 1873 "*so low as* to make the net income less than twenty per cent", and thereafter "*not less than* ten per cent" per annum, it may be seen that Section 2845(3) of the Code of 1872 merely directed the supervisors to fix tolls "*which*

must not raise annually an income *exceeding* fifteen per cent". The earlier statutes therefore prescribed a *minimum* rate of return below which the supervisors could not go. But the Code of 1872 prescribed a *maximum* rate of return which the supervisors might permit.

Thus, just as the Supreme Court of California held, the very Code sections relied upon by appellant to create some sort of a contract right to be protected from rate control except when its bridge earnings exceed fifteen per cent per annum, must be given a strained interpretation indeed if those sections be taken as a promise by the State never to act otherwise.

We believe it unnecessary to extend further this analysis of the legislative intent revealed in the Code provisions. Summarizing, we believe the following conclusions are self-evident:

1. In the Codes of 1872, and in all the legislative acts preceding the Codes, there clearly was manifested an attempt to subject toll bridges to continuing regulation. There is no indication that there was delegated to county boards of supervisors the power to make a rate contract, mutually binding, to suspend for a term of years whatever continuing rate-making power the Legislature had given to such boards.

2. Neither the Codes of 1872 nor the preceding statutes prescribed a definite or uniform method for the ascertainment of the base value upon which the rate of return should be calculated, or the costs of operation to be allowed.

3. There is no evidence that the rate of return of 15 percent mentioned in the Code as a maximum rate for toll bridges was intended to place toll bridge companies in a class set apart from other grantees of public franchises. On the contrary, there is every evidence that the intent revealed in the statutes even prior to the Codes was merely to declare a policy that would permit to toll bridges as well as other classes of utilities a fair rate of return measured by the monetary standards of the time. We might refer, for example, to the Canal Company Act of 1862 (Stats. 1862, p. 541) which provided that rates "shall not be reduced by the supervisors so low as to yield to the stockholders less than one and one-half per cent per month upon the capital actually invested".

EVEN ASSUMING A LEGISLATIVE ATTEMPT TO PERMIT COUNTIES TO ENTER INTO RATE CONTRACTS, THE LEGISLATURE WAS PROHIBITED BY CONSTITUTIONAL MANDATE FROM GRANTING SUCH AUTHORITY.

The Supreme Court of California, in the judgment here appealed from, held not only that the alleged contract was not to be found in the language of the Code provisions relied upon by appellant, but that the State Constitution expressly reserved a right in the Legislature to repeal or alter such laws, the Court referring to Article IV, Section 31 of the Constitution of 1849, and to Article XII, Section 1 of the Constitution of 1879.

The cited constitutional provision has always read:

"* * * All laws now in force in this State concerning corporations and all laws that may be hereafter

passed pursuant to this section may be altered from time to time or repealed."

We presently shall refer to decisions of this Court construing that provision of the State Constitution to prevent the Legislature from bartering away its regulatory powers. And we also may quote the provision of Article I, Section 21 of the Constitution of 1879, which even more strongly provides for the legislative alteration of such laws. This provision reads as follows:

> "No special privileges or immunities shall ever be granted which may not be altered, revoked, or repealed by the Legislature, * * *."

THE DECISIONS OF THIS COURT IN CASES ARISING IN CALIFORNIA HAVE BEEN DIRECTLY CONTRARY TO APPELLANT'S CONTENTION.

The appellant refers to many cases holding that a State *may* authorize one of its municipal subdivisions to establish utility rates by contract. This, of course, is not to be disputed. But such a contract must appear in plain and unambiguous language, and the power to make it must clearly appear.

There have been two decisions by this Court involving the powers of county boards of supervisors of California to enter into contracts with grantees of franchises, and in each it was held that both the contract and the power to make it were non-existent. Those two cases being so closely parallel to the one at bar, they should be referred to here at some length.

SPRING VALLEY WATER WORKS v. SCHOTTLER (1884), 110 U. S. 347.

The contending utility in that case was organized under the general law of April 22, 1858, for the incorporation of water companies. The act provided that the board of supervisors might prescribe proper regulations for the delivery of water, but rates should be fixed by five commissioners, only two of whom were to be selected by the supervisors and two by the company, and those four should choose a fifth member.

By Statutes of 1881, page 54, the rate-making power was transferred to the municipal or county legislative body. Thereupon, the supervisors of the City and County of San Francisco expressed their intention of proceeding directly to fix rates, and refused to cooperate in the appointment of rate commissioners.

The Water Company having challenged this action by mandate proceeding, the matter came before the Supreme Court of California in *Spring Valley Water Co. v. Supervisors* (61 Cal. 3). The State Court held that the statutory provision did not constitute a contract. On appeal, that judgment was sustained by this Court.

Although the issue thus raised was not whether there existed a *rate contract* for the duration of the franchise, it was the contention that the rate-fixing *method* prescribed in the earlier statute constituted a contract not subject to impairment. And that is substantially the issue in the instant case.

On this question the Supreme Court of California declared:

"* * * No property, tangible, or intangible, of the company has been interfered with. The water which

it is engaged as a business in selling to the public is regarded and protected by law as its property; but, as property, which has been devoted to the use of the public, it is subject to the regulation and control of the State; and the State, while it has sanctioned the use, has a duty to discharge to the public by regulating the use, as well as the powers and privileges of the corporation incidental to the use. These things are not of the contract; they appertain to the sovereignty of the State, and can not be bargained away." (61 Cal. 8.)

Then, in the decision of this Court affirming the judgment below, it was said (110 U. S. 353):

"* * * One of the obligations the Company assumed was to sell water at reasonable prices, and the law provided for a special commission to determine what should be deemed reasonable both by the consumers and the Company, but there is nowhere to be found any evidence of even a willingness to contract away the power of the Legislature to prescribe another mode of settling the same question if it should be considered desirable. In the *Sinking Fund Cases*, 99 U. S. 721, it was said that whatever rules for the government of the affairs of a corporation might have been put into the charter when granted could afterwards be established by the Legislature under its reserved power of amendment. Long before the Constitution of 1879 was adopted in California, statutes had been passed in many of the States requiring water companies, gas companies and other companies of like character, to supply their customers at prices to be fixed by the municipal authorities of the locality; and, as an independent proposition, we see no reason why such a regulation is not within the scope of the legislative power, unless prohibited

by constitutional limitations or valid contract obligations. Whether expedient or not is a question for the Legislature, not the courts."

* * * * * * *

"* * * The Constitution of California, adopted in 1849, prohibited one Legislature from bargaining away the power of succeeding Legislatures to control the administration of the affairs of a private corporation formed under the laws of the State. Of this legislative disability, the Spring Valley Company had notice, when it accepted the privileges of the Act of 1858, and it must be presumed to have built its works and expended its moneys in the hope that neither a succeeding Legislature, nor the people in their collective capacity when framing a Constitution, would ever deem it expedient to return to the old mode of fixing rates, rather than on any want of power to do so, if found desirable. * * *." (110 U. S. 355.)

"* * * Neither are the chartered rights acquired by the Company under the law to be looked upon as contracts with the City and County of San Francisco. The Corporation was created by the State. All its powers came from the State and none from the city or county. As a Corporation it can contract with the city and county in any way allowed by law, but its powers and obligations, except those which grow out of contracts lawfully made, depend alone on the statute under which it was organized, and such alterations and amendments thereof as may, from time to time, be made by proper authority. The provision for fixing rates cannot be separated from the remainder of the statute by calling it a contract. It was a condition attached to the franchises conferred on any corporation formed under the statute and indissolubly connected with the reserved power of alteration and repeal." (110 U. S. 356.)

COUNTY OF STANISLAUS v. SAN JOAQUIN & KINGS RIVER CANAL & IRRIGATION COMPANY (1904), 192 U. S. 201.

This case bears a striking similarity to the one at bar. The canal company was incorporated in 1871 under the Statutes of 1853, as amended in 1862, reading in part as follows:

> "Every company organized as aforesaid shall have power, and the same is hereby granted, * * * to establish, collect, and receive rates, water rents, or tolls, which shall be subject to regulation by the board of supervisors of the county or counties in which the work is situated, *but which shall not be reduced by the supervisors so low as to yield to the stockholders less than 1½ per cent per month upon the capital actually invested.*"

On March 12, 1885, page 94, the Legislature provided as follows:

> "Said boards of supervisors, in fixing such rates, shall, as near as may be, so adjust them that the net annual receipts and profits thereof * * * *shall be not less than 6 nor more than 18 per cent* upon the said value of the canals, * * * and all other property actually used and useful to the appropriation and furnishing of such water of each of such persons, companies, associations, and corporations; * * *."

On June 24, 1896, the county supervisors adopted an ordinance prescribing the rates for the ensuing year which were estimated to yield a 6 percent return. A bill for an injunction was filed in the Circuit Court of the United States, Northern District of California, and a decree entered holding the Act of 1885 constituted an impairment of contract. (113 Fed. 930.) On appeal to this Court,

the decree below was reversed. The following quotations from this Court's opinion are particularly pertinent here:

"First. The question which first arises in this case is whether there was a contract with the company under the Act of 1862, by reason of which the state could not thereafter authorize the board of supervisors to reduce the rates so low as to yield less than $1\frac{1}{2}$ per cent per month upon the capital actually invested."

* * * * * * *

"*It seems to us that language of this nature cannot properly be construed as a promise or pledge that the limitation as to rates may not be altered at any time when, in the judgment of the legislature, it may be proper so to do.* Water rates which might have been perfectly reasonable at the time of the passage of the act of 1862, although amounting to $1\frac{1}{2}$ per cent per month upon the capital actually invested, might, in the course of years, become exceedingly burdensome to those who used the water, and amount to a very unreasonable compensation to the company for the water it sold. Irrigation by means of corporations formed to supply water was in its infancy in 1862 in California, and the risks necessarily taken in the organization of such companies, and the prosecution of their work, were then not only very large, but also extremely uncertain in character. Consequently, a rate of compensation was proper at that time which, in the course of years and the accumulated experience as to the necessary cost of such works, and of their successful operation, including the consideration of the risk attendant upon their operation, would make a water rate, as provided by the act of 1862, a very unreasonable overcharge. These facts must have been present in the minds of those who enacted the legislation of 1862, and it would be most unreasonable to suppose that it

was intended by any such legislation to forever thereafter tie the hands of the state in regard to all companies organized under the act of 1862, and before the passage of the act of 1885.

"The authority given by the act of 1862 enabled the board of supervisors to conditionally regulate the rates. There is no promise made in the act that the legislature would not itself subsequently alter that authority. *The state simply authorized its agents, the boards of supervisors, to regulate rates, but not to reduce them below a certain point. We do not think that from this language a contract can or ought to be implied that the state might not thereafter authorize the boards to reduct them, or that it might not itself do so directly.* Even as between individuals, such an implication would not be a reasonable one from the language used, and as the contract, if it existed, would take away from the legislature its otherwise undoubted right of regulation upon a subject of great public importance, there is still less reason for implying a contract which would prevent the state from using its power to that end for the future. The language of this portion of the act applies to the boards and limits their right of reduction leaving unhampered the right of the state to interfere directly or by authorizing the boards to reduce the rates below the point stated in the act. In order to make such a contract the language must be plain, and susceptible of no other reasonable construction. *Freeport Water Co. v. Freeport City*, 180 U. S. 587-599, 45 L. ed. 679-688, citing *Railroad Commission Cases*, 116 U. S. 307-325, 29 L. ed. 636-642." (Italics supplied.)

* * * * * * *

"*In our belief, the language of the act of 1862 does not and was not intended to form a contract, but simply amounted to the statement of the then pleasure*

of the legislature, to so remain until subsequently altered by it. The cases heretofore decided in this court are authority for this view. * * *" (Italics supplied.)

* * * * * * *

"Second. But, assuming there was a contract, we think the rates could be changed under that provision of the Constitution of the State adopted in 1849, article 4, sec. 31 * * *." (192 U. S. 211.)

* * * * * * *

"* * * In reiterating this view of the power, we think that a mere reduction of rates, while still leaving reasonable, fair, or just compensation for the use of the property, is not prohibited, and we are quite clear that, *even assuming there was a contract, the legislature nevertheless had the power to so alter and amend the act of 1862 as to provide for the fixing of rates as set forth in the act of 1885.*" (Italics supplied.)

Thus, even though the California statute under consideration had imposed a minimum rate limitation upon the county board of supervisors, this Court held there was no contract and could be none. It was a statute imposing the same rate-making limitation as was imposed upon county supervisors by the toll-bridge acts prior to 1872, thus giving rise to a far stronger claim of contract impairment than can arise from Section 2845 of the Political Code of 1872 telling the supervisors that they may fix rates "which must not raise annually an income exceeding fifteen per cent".

There were two other cases coming to this Court from California involving the power of municipalities to enter into rate contracts. In each it was held the cities had no

such power. (*Home Telephone & Telegraph Co. v. Los Angeles,* 211 U. S. 265; *Railroad Commission v. Los Angeles Railway Corporation,* 280 U. S. 145.)

One other case arising in California, *Los Angeles v. Los Angeles City Water Company,* 177 U. S. 558, upon which appellant seems to rely heavily, held that in the year 1868 the City of Los Angeles had the power to enter into a rate contract, this view being taken in the light of the State Court decisions as they then read. But the facts were very different from those in the other cases above cited and in the case here. The city had leased its own water works for an annual consideration, as well as granting a franchise for extensions of the water system. The language of the agreement was the language of contract. And as this Court thereafter said in the *Home Telephone & Telegraph case* (211 U. S. 265, 276), "the contract was in specific terms ratified and confirmed by the Legislature".

It must be patent, therefore, that the judgment of the Supreme Court of California from which this appeal is taken was exactly in conformity with the holdings of this Court in parallel situations.

And those cases are not unique in any way. They are exactly in line with so many other rulings of this Court that it seems unnecessary to do more here than merely mention some of them.

The Court's attention should be directed to its recent action in dismissing an appeal taken from a decision by the Supreme Court of New Hampshire upholding the power of that state to regulate toll bridge rates against the claim of a rate contract impairment, namely, *Stearns v. Lorenz,* 287 U. S. 565. The case below was *Lorenz v.*

Stearns, 85 N. H. 494, 161 Atl. 205, the state court holding the statute governing the right to charge tolls according to a specified schedule was not to be considered as a contract, and, if it could be so construed, it was alterable under the reserved power expressed in the state constitution.

Were other authorities necessary upon the proposition that a state by constitutional provision may reserve the power to alter or repeal laws respecting franchise privileges, the following cases should suffice:

Shields v. Ohio, 95 U. S. 319, 324;

Central Pac. v. Gallatin, 99 U. S. 727, 730, 731;

Sioux City St. Ry. Co. v. Sioux City, 138 U. S. 98, 104;

Peoples Gaslight Co. v. Chicago, 194 U. S. 1, 9;

San Antonio Traction Co. v. Altgelt, 200 U. S. 304, 306, 308;

Fair Haven etc. Ry. Co. v. New Haven, 203 U. S. 379, 388, 389;

Louisville & Nashville R. Co. v. Garrett, 231 U. S. 298, 316;

Puget Sound Traction Co. v. Reynolds, 244 U. S. 574, 579.

The cases expressing the general principle of strictest statutory construction where a claim is made of contract impairment are so numerous as hardly to require citation. As was said in *Wheeling & Belmont Bridge Company v. Wheeling Bridge Company,* 138 U. S. 287, 293:

> "* * * An alleged surrender or suspension of a power of government respecting any matter of public concern must be shown by clear and unequivocal lan-

guage; it cannot be inferred from any inhibitions upon particular officers, or special tribunals, or from any doubtful or uncertain expressions."

Not only must the power to make the contract be clear and unequivocal, but the words of the statute or ordinance itself must be such as to compel the conclusion that a contract was intended and consummated. Thus, a mere limitation placed upon the power of a rate-making authority, whether the limitation be the prescription of maximum or minimum rates, does not of itself give rise to a contract obligation.

Covington & Lexington Turnpike Road Co. v. Sandford, 164 U. S. 578, 588;
Freeport Water Co. v. Freeport, 180 U. S. 587, 600;
County of Stanislaus v. San Joaquin & Kings River Canal & Irrig. Co., 192 U. S. 201, 207;
Wyandotte County Gas Co. v. Kansas, 231 U. S. 622, 629.

And it is clear, also, that this Court quite properly has ever been inclined to accept the judgment of a state court in the construction of the laws of such state. As was said in *Milwaukee Electric Railway & Light Co. v. Railroad Commission of Wisconsin*, 238 U. S. 174, 184:

"In view of the weight which this court gives in deciding questions involving the construction of legislative acts to decisions of the highest courts of the states in cases of alleged contracts, and our own inability to say that this statute unequivocally grants to the municipal authorities the power to deprive the legislature of the right to exercise in the future an acknowledged function of great public importance, we

reach the conclusion that the judgment of the Supreme Court of Wisconsin in this case should be affirmed."

Before concluding this subject of claimed contract impairment, we should reply particularly to one point seemingly pressed by appellant to the effect that the Carquinez Bridge franchise, secured by its predecessor in interest from the County of Contra Costa on February 5, 1923, was expressly ratified by a legislative act on May 8, 1923. There need be no misunderstanding as to the meaning and purpose of the legislative action thus referred to. It was an amendment to Section 2872 of the Political Code reading as follows:

> "* * * All licenses and franchises granted subsequent to the fourteenth day of March, A. D. one thousand eight hundred eighty-one for the construction of any such bridges across the Sacramento or San Joaquin Rivers, the Suisun Bay, or Carquinez Straits, the Petaluma, Napa or Sonoma Creeks, whether above or below the head of navigation of said waters or streams, are hereby ratified, approved, confirmed and made valid for all purposes; provided, however, that nothing herein contained shall be construed to extend the term of any such license or franchise beyond the period fixed in the order granting the same, or to revive any license or franchise which has lapsed for non-user, or to restore any license or franchise which has been forfeited."

This Act, it is true, was a ratification of the franchise otherwise questionable as to its duration because of the possible lack of authority of the board of supervisors to grant such a franchise for twenty-five years. But the Act lends not the slightest aid to appellant's contention that

the franchise created a contract, or that either the county or the Legislature possessed the power to barter away the power to regulate the bridge tolls. It is a very different situation from that existing in the *Los Angeles City Water Company case* (177 U. S. 558), above referred to, where a contract in specific terms was specifically ratified by the Legislature. Moreover, had there actually been a specific ratification, that fact would add nothing to appellant's case, for appellant does not contend that the franchise itself purports to be or constitutes the alleged contract. It finds its alleged contract in the Code provisions alone, and the Legislature has never expressed itself as sanctioning a construction of the Code for which appellant contends.

Let us also mention briefly the further point urged by appellant to the effect that the Supreme Court of California had theretofore held the ordinance granted by the County of Contra Costa to constitute a binding contract. The decision referred to (*County of Contra Costa v. American Toll Bridge Co.*, 10 Cal. (2d) 359) cannot be taken to have any such significance. It held merely that county boards of supervisors had the power to provide in a toll-bridge franchise for the payment by the grantee of a two percent gross revenue fee, this power being derived from various Code provisions, and a power constantly exercised when granting franchises to all classes of public utilities. No question of contract to be free from rate regulation was there involved.

PROCEDURAL DUE PROCESS.

Appellant's claimed error below under the heading of "Procedural Due Process" seems to be rested upon this Court's two decisions in *Morgan v. United States*, 298 U. S. 468, and 304 U. S. 1. Certainly, there is little similarity between that case and the instant one.

THERE WAS FULL COMPLIANCE WITH THE REQUISITES OF DUE PROCESS, AS TO NOTICE, HEARING, AND CONSIDERATION.

Let us consider briefly what appellant finds in the procedure before the Railroad Commission or before the Court below to constitute an alleged failure of due process of law. There was, it says, no complaint or answer before the Commission, no oral or written argument, and no service of proposed findings before issuance of the final command. The fact is that none of these things was ever demanded or even mentioned by the appellant during the course of the proceedings before the Commission. The fact is that appellant expressly waived opportunity to argue or brief the case. (R. 530.) There is no intimation anywhere that it was foreclosed from producing any evidence desired. There is no charge that the Commission itself did not consider the evidence received at the hearings before one of the Commissioners, just as the statute authorized. True, appellant was not served in the beginning with a complaint alleging that its rates were deemed unreasonable by the Commission, or specifically alleging the many facts which necessarily would be developed during the course of such a rate proceeding, for, obviously, the Commission could not rightfully prejudge

the situation before investigation and hearing. We can discover no allegation anywhere that appellant did not know exactly what the issues were. It does not say anywhere that the Commission decided the case upon facts not in evidence. And there is no charge that thereafter it was not accorded the fullest judicial review of the Commission's action, with a stay of the rate order pending such review.

It is submitted, therefore, that there is no indication whatever of failure of due process in so far as that phrase of the Constitution has been held to govern the procedural steps of either administrative or judicial action.

THERE WAS NO INADEQUACY OF FINDINGS BY THE COMMISSION.

But what appellant further asserts to amount to failure of procedural due process is the alleged failure of the Railroad Commission to make adequate findings of fact. It is not alleged that appellant has suffered any disadvantage thereby. It is not claimed that the asserted findings are required by law. Nor is it alleged that the Supreme Court of California in any way misinterpreted the facts because of the asserted failure of findings.

What appellant here complains of cannot be a failure of due process in a procedural sense. So we believe that reply can best be made thereto by examining appellant's claim of confiscation, the subject next to be considered. Likewise, the charge that the Commission arbitrarily separated the two bridges owned by appellant may more appropriately be examined in the same connection.

CONFISCATION OF PROPERTY.

Appellant asserts that as a result of the Commission's rate order its property in both bridges has been confiscated.

It declares that the minimum figure to represent the value of the Carquinez Bridge is $8,632,622.46; that the net annual revenue from the operation of that bridge for the year 1938 under the rates fixed by the Commission would have been $570,298.00; and the resultant rate of return 6.6 percent. It seemingly demands a return of 9 percent to avoid confiscation.

Appellant claims further that the inevitable effect of the rate order on the Carquinez Bridge is to confiscate its property in the Antioch Bridge. It says that the minimum value of both bridges is $10,780,411.00 and that the combined earnings of $606,320.00 would yield a return of only 5.6 percent.

It will be shown presently that the Railroad Commission fixed rates for the Carquinez Bridge alone to yield in excess of 7½ percent on a value of $7,949,954.00. So we should first examine the claim that the Carquinez and Antioch bridges must be regarded as a single property for rate-fixing purposes.

THE CARQUINEZ BRIDGE IS LEGALLY AND EQUITABLY A DISTINCT RATE-MAKING UNIT.

It is essential that the history of appellant's two bridges be fully understood.

The American Toll Bridge Company was organized as a Delaware corporation on May 28, 1923. (R. 209.) It

has always been controlled by the American Toll Bridge Company of California, another Delaware corporation simultaneously organized. (R. 210.)

The organizers of these corporations were the officials of the Rodeo-Vallejo Ferry Company, a company which for some time had been operating a ferry service at approximately the location of the Carquinez Bridge as later constructed. (R. 209, 358.) The Rodeo-Vallejo Ferry Company applied to the supervisors of the County of Contra Costa on September 19, 1922, for a franchise to build a bridge at the Carquinez Straits. There were four other applicants for similar bridge franchises, two with "very powerful backing", and the opposition of these rivals and of other interests to the Rodeo-Vallejo Ferry Company's application resulted in a "great deal of expense in litigation and in other ways and many delays". (R. 360.) The Rodeo-Vallejo Ferry Company obtained a franchise February 5, 1923.

The County of Contra Costa also granted a franchise for the construction of a bridge at Antioch about twenty-five miles above the Straits of Carquinez. This was granted to the Delta Bridge Corporation on June 4, 1923. (R. 210.)

After the County of Contra Costa had thus granted the two bridge franchises, the American Toll Bridge Company acquired both franchise rights, and thereafter began the construction of both bridges. (R. 210.) It has continued to own and operate both bridges since their completion.

Intermediate the Carquinez and Antioch bridges there existed a ferry service operated by the Martinez-Benicia Ferry Company. This the American Toll Bridge Company

purchased in 1928 and has since continued to operate. (R. 231, 475.) It also purchased a ferry franchise from one Lauritzen to operate a ferry near the Antioch Bridge. (R. 452.)

The appellant, American Toll Bridge Company, earnestly contends that these two bridges should be considered together as a single rate-making unit. It makes this plea, of course, because the Antioch Bridge has been far less profitable than the Carquinez Bridge. And it says that the effect of a reduction of rates charged for crossing the Carquinez Bridge will compel a similar lowering of its tolls upon the Antioch Bridge, with consequent loss of revenue thereon. Strangely, it does not claim that its ferry property should likewise be considered a part of its so-called transportation system.

The equity of appellant's claim in this respect was considered fully by the Supreme Court of California and found wanting. The judgment of the lower Court, fully informed, may not well be questioned unless its action was contrary to established precedents in like situations. We submit that such precedents do not exist.

"The toll bridge company", the State Court said (R. 131), "purchased and operated the competitive factors for the obvious purpose of reducing competition, and it has undoubtedly succeeded in accomplishing that end. It cannot expect more."[1] The Court might well have added that this Court has said many times that the due process clause of the Constitution does not protect public utilities against the hazards of competition. (*Public Service Commission*

[1]Appellant, at page 116 of its brief, unfairly refers to the quoted words as stating that it purchased "both bridges."

of Montana v. Great Northern Utilities Company, 289 U. S. 130, 135.) Appellant here candidly states that it is the competition between the two bridges which compels the rate-making authority to treat them as one, and this admitted competition, moreover, was wholly self-imposed, even to the extent of operating a ferry service between the two bridges.

Appellant refers to other decisions by the California Railroad Commission as being directly in conflict with its action in the instant case. Such conflict does not exist. What the Commission may have done in fixing rates for a gas or electric utility having a physically interconnected system serving various communities, and the operation of each part depending upon the functioning of the whole, lends little support to the charge that the Commission acted arbitrarily in refusing to treat two competitive bridges as a single rate-making unit.

The lower Court's analysis of the authorities upon the point was entirely correct. In its brief here, appellant has referred to another claimed authority, namely, *Clarksburg-Columbus Short Route Bridge Co. v. Woodring et al.*, 89 Fed. (2d) 788. But the case bears little similarity to the one here. It was a situation where one bridge company demanded the right to be heard by the Secretary of War before he reduced the rates of a competing bridge company. The United States Court of Appeals for the District of Columbia, construing the federal act and invoking a principle applicable to the Interstate Commerce Commission, held merely that the competing carrier was entitled to a hearing in any proceeding affecting its interests. There is not the slightest intimation that, as a matter of

constitutional right; the owner of a less profitable bridge may, because of his own needs, compel the continuance of higher rates on another.

Before concluding reply to appellant's argument on the point, it should be made clear that although the Commission denied appellant's motion to treat the two bridges as a unit, it did say (R. 34) that consideration would be given to the effect of the rates fixed on the company as a whole. That the Commission made this statement with sincerity, and actually did so view the results to flow from its order, we believe may be demonstrated when considering the merits of the claim of confiscation.

STATE COURT'S JUDGMENT ON ISSUE OF CONFISCATION.

We need not dwell at length upon the State Court's analysis of each point advanced by appellant in support of its claim of property confiscation. The Court fully and correctly summarized every contention advanced, as to property value, revenue, and rate of return. (R. 133-140.) What should be noticed first of all is the particular objection taken by appellant to certain declarations by the Court paraphrasing the findings made by the Commission. Appellant asserts strongly that the Commission failed to make adequate findings of fact, and that the Court indulged in mere assumptions when it thus reviewed the Commission's conclusions. The Court expressly found otherwise. It declared no difficulty whatever in understanding the facts supporting the Commission's decision. To anyone familiar with the testimony and exhibits con-

tained in the record, there could not have been any uncertainty as to the basis of the Commission's action.

We may proceed, therefore, to examine each claim made by appellant in the Court below and also here, considering first the subject of property value.

APPELLANT'S CLAIM OF VALUE.

It is clear that the composition of the rate base upon which appellant here asserts the right to a fair return is as follows:

Book Cost	$7,949,954.00
Additional Interest During Construction	382,668.46
Cost of Developing Business	300,000.00
Total	$8,632,622.46

It is clear that the Court below rejected the last two items as additive to the first, thus affirming the Commission's order fixing rates upon a base of $7,949,954.00.

Just why the Commission used this figure is perfectly clear. Its opinion (R. 37) sets forth the results of several cost estimates obtained by witnesses in various ways. The Commission said that the costs as shown on the company's books contained questionable items. These costs, as shown in the company's Exhibit No. 117 (R. 410), and the Commission's Exhibit No. 1 (R. 209, 214), plus lands, furniture and fixtures, total $7,949,954.00.

Let us see now just what appellant's principal witness, Mr. Ready, said in respect to this figure when testifying

as to a reasonable rate base to be taken for the purpose of ascertaining reasonable rates. Exhibits Nos. 132 and 134 by this witness, which showed the net earnings at rates theretofore charged, and the estimated earnings at rates which a Commission witness had suggested for the future, were tested by him against a rate base of $7,949,-954.00 and as to the reasonableness of the use of such a base, this witness expressed his opinion in these words (R. 497):

"* * * After considering the estimated reasonable historical cost, as set forth in Exhibit 117, and also the possible modifications of the book cost which might be made, including the addition of interest during construction and the possibility that—probability that the Dunn payment should be charged to cost of money rather than overhead—I came to the conclusion that the lowest figure that reasonably could be applied to the property would be the book costs as they stood on the books. It is true that some items might be questioned, but that on the other hand, the erroneous inclusion of interest during construction on the books, and only the interest and amortization of bond discount on the bonds, instead of the interest on the entire capital, plus the possibility of additions on account of the franchise of the Rodeo-Vallejo Ferry, that those factors would more than offset any possible modification. And also, in view of the fact that the books could be used to determine the capital throughout the entire period without making numerous adjustments, I made this study on the basis of the book costs of the Carquinez and Antioch Bridges, as distinguished from the reasonable historical cost or any other item."

This is the only expression by any of appellant's witnesses indicating to the Commission its claim of a rate base to be accepted. True, there were estimates presented as to what the bridge might reasonably have cost then, or what it might cost today. But at no time was any other figure suggested as reflecting value for rate-fixing purposes under the method proposed by the witness. There was no estimate of accrued depreciation. And what appellant has asserted in its brief for the addition of a going concern value is purely a fiction of counsel, for there is not a line of evidence respecting the measure or even the existence of a going concern value. As to the inclusion of additional interest during construction, it is true that appellant's witness testified thereto, but just as he readily conceded and as the Commission stated in its decision, there were also questionable items of cost included in the book accounts which should be excluded.

Therefore, upon such a showing by appellant, the Commission cannot justly be charged with arbitrary or capricious action in accepting appellant's own showing as a basis for the rate-fixing order. Appellant has not once alleged, either in its pleading in the Supreme Court of California (R. 20) or in its assignments here (R. 197), that it made and pressed a claim for the acceptance of any higher value. True, the Commission did not expressly find that the value or base taken was considered reasonable, and under the circumstances it was not called upon to do so. What the Commission did was perfectly plain, as now readily may be shown.

DIFFERENCES BETWEEN APPELLANT'S CLAIMS AND COMMISSION'S FINDINGS.

We ask the Court to refer to appellant's Exhibit No. 134, (R. 506 A-D.) From the first of those studies, and from appellant's representations in its brief here (Appellant's Brief p. 148), there has been prepared the table appearing opposite to permit a comparison of appellant's representations before the Commission with its claims here made. We ask the Court to consider also that part of the Commission's opinion (R. 38) which refers to this exhibit.

First. The Commission took Mr. Ready's estimated net revenue of $629,799.00 for the year 1938, before allowance was made for state and federal income taxes. It then stated that after allowance for such taxes, the resultant net revenue would approximate $575,000.00. It thus allowed $54,799.00 for the income taxes accruing against the estimated 1938 revenue, although Mr. Ready's exhibit had shown taxes of $133,237.00 in that year, he having based such taxes upon the revenue of the preceding year. The difference is $78,438.00.

Second. The Commission then correctly stated that Mr. Ready later had conceded his estimate of increased traffic to have been too low, he later agreeing that the Commission's witness was correct. (R. 525.) His estimate of revenue from tolls was based directly upon his estimate of traffic, as his exhibit and testimony showed. Hence, the Commission correctly stated that its adjusted net return of $575,000.00 above referred to should be increased to about $590,000.00. The rate of return, had the flat 50-cent toll used in the exhibit been prescribed, would have been 7.42 percent.

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Carquinez Bridge

Estimated Future Traffic, Rate Base, Operating Revenues, Expenses and Return

	Claimed in Brief Page 148 — Rates Prescribed by Commission	AS ESTIMATED BY WITNESS READY—EXHIBIT NO. 134 (RECORD 506 A)						
		Actual At Old Rates	AT PROPOSED RATE OF 50 CENTS PROPOSED BY J. G. HUNTER					
	Year 1938	Year 1937	1938	1939	1940	1941	1942	1943
Vehicular Units:								
Present Rates 100%		1,720,786	1,596,000	1,624,000	1,652,000	1,682,800	1,716,400	1,747,200
Proposed Rates 108.87%		....	1,737,565	1,768,049	1,798,532	1,832,064	1,868,045	1,902,177
Rate Base	$8,632,622	$7,949,537	$7,949,537	$7,949,537	$7,949,537	$7,949,537	$7,949,537	$7,949,537
Operating Revenues:								
Tolls	$1,135,277	$1,544,691	$1,060,036	$1,078,634	$1,097,230	$1,117,687	$1,140,004	$1,160,461
Rents and Miscellaneous	8,243	8,243*	8,243	8,243	8,243	8,243	8,243	8,243
Total Revenue	$1,143,520	$1,552,934**	$1,068,279	$1,086,877	$1,105,473	$1,125,930	$1,148,247	$1,168,704
Operating Expenses:								
Operation and Maintenance	$ 146,700	$ 135,084	$ 146,700	$ 146,700	$ 146,700	$ 146,700	$ 146,700	$ 138,300
Gross Revenue Tax (2%)	22,706	31,114	21,201	21,573	21,945	22,354	22,800	23,209
General Expense	63,852	149,970	63,852	63,991	64,365	64,434	64,575	62,186
Amortization of Investment	206,727	206,727	206,727	206,727	206,727	206,727	206,727	206,727
Total Expenses (ex. income tax)	$ 439,985	$ 522,895	$ 438,480	$ 438,991	$ 439,737	$ 440,215	$ 440,802	$ 430,422
Net Income before Income Taxes	$ 703,535	$1,030,039	$ 629,799	$ 647,886	$ 665,736	$ 685,715	$ 707,445	$ 738,282
Income Taxes:								
Federal Income Tax	$ 108,511	$ 66,223	$ 108,511	$ 45,073	$ 40,779	$ 50,427	$ 54,899	$ 61,509
State Franchise Tax	24,726	....	24,726	9,2[illegible]	9,821	11,858	13,402	15,951
Total Income Taxes	$ 133,237	$ 66,223	$ 133,237	$ 54,309	$ 50,600	$ 62,285	$ 68,301	$ 77,460
Total All Expenses	$ 573,222	$ 589,118	$ 571,717	$ 493,300	$ 490,337	$ 502,500	$ 509,103	$ 507,882
Net Revenue	$ 570,298	$ 963,816	$ 496,562	$ 593,577	$ 615,136	$ 623,430	$ 639,144	$ 660,822
Rate of Return on Base (above)	6.6%	12.12%	6.25%	7.47%	7.47%	7.84%	8.04%	8.31%

*Figure corrected to read $8,243 instead of $8,242.

**Figure corrected to read $1,552,934 instead of $1,522,934.

But, the Commission did not prescribe a flat 50-cent toll. Appellant concedes that the tolls prescribed as reasonable will average 56 cents per car and will yield gross revenue of $1,143,520.00 (R. 148), instead of $1,068,279.00, as computed by Mr. Ready in Exhibit No. 134.

So, when the Commission said that although a rate of return of 7½ percent was deemed reasonable for this particular company, but that it would accord earnings in excess of this to guard against any inaccuracies in traffic estimates, it was perfectly correct as to its reasoning and entirely accurate as to the facts leading to such conclusion. With the exception of income tax expense, and the failure of the Commission to accord the rate of return demanded, the appellant may not well dispute any features of the Commission's action.

It is manifest, therefore, that appellant's claim of confiscation of its Carquinez Bridge property is rested upon just three points of difference with the Commission, namely, the rate base, the allowance for income taxes for the first year, and what constitutes a reasonable rate of return. These may be summarized briefly.

RATE BASE.

The rate base taken by the Commission in reliance upon the testimony of appellant's witness has already been considered. Inasmuch as appellant argues merely for the addition of two items to that figure, it is unnecessary to do more than refer to those two items.

The claimed additional interest is not some interest charge actually incurred during the course of construction. The rate base of $7,949,954.00 includes $688,092.00 for interest during construction actually paid. (R. 214.) It includes other overhead or indirect charges additional to the cost of the physical structure totalling fully $2,000,000.00, or about 35 percent. (R. 335.) And as appellant's witness has conceded that any theoretical deficiency in estimated interest during construction was offset by questionable inclusions in the book costs, it seems quite unnecessary to here examine such costs in detail.

Appellant's argument for the allowance of a going concern value is without any evidentiary basis, whatever. No study of going concern was made, nor its inclusion urged. Appellant now argues that an inclusion in the amount of about 10 percent is the usual thing, and frankly says (Br. pp. 140-143) that it computes the claimed allowance of $300,000.00 by the deficiency of earnings for the first five years below 9 percent. It then adds (Brief, pp. 174-175) that on the less profitable Antioch Bridge, using the same method of computation, it calculates the going value to be $550,000.

EXPENSE FOR INCOME TAXES.

It has been pointed out above that the Commission reduced the state and federal income taxes shown in the amount of $133,237.00 in appellant's Exhibit No. 134 by $78,438.00, thus leaving for this item $54,799.00. When it thereupon increased the toll upon which that exhibit was based, consequently increasing the tax upon net revenue,

it did not say how much such income taxes would be increased. As appellant concedes a net revenue for 1938 of $703,535.00, before the payment of taxes, and a reference again to Exhibit No. 134 reveals that for the year 1942 there is a comparable taxable net revenue of $707,445.00, and a tax thereon shown for the following year of $77,-460.00, it may be seen that such amount is adequate also for the year 1938.

The only dispute, of course, is whether the Commission should have tested the expected results for the year 1938 by the inclusion of actual taxes payable during that year on the higher revenue of 1937 at the old rates. It is submitted that the Commission's action in this respect could not reasonably have been otherwise. It was not fixing rates for 1938 alone. It followed its own practice and what we believe to be the ordinary accounting practice.

RATE OF RETURN.

From the above brief analysis of the Commission's action, it becomes perfectly evident, therefore, that it actually accorded a higher rate of return than 7.5 percent. It used a base value of $7,949,954.00. Appellant concedes a net return of $703,535.00 before allowance for income taxes. The taxes upon such net income, as shown by its calculation for the year 1943, are not in excess of $77,-460.00, thus making a net revenue for 1938 of $626,075.00. This is a return of 7.86 percent. Upon appellant's claimed rate base of $8,632,622.00 it would be a return of 7.25 percent, not 6.6 percent as asserted.

What appellant seemingly demands, however, is a return of 9 percent upon both bridges. It develops its argument by referring to what it terms the "cost of money", and says (Brief for Appellant p. 158) that the average cost of money invested in the two bridges is, for the year 1938, equal to 7.85 percent. It then proceeds (p. 159) to attribute to the Court below a statement to the effect that appellant is not entitled to a return as high as the cost of its money. The Court below did not so state. It said it was not persuaded that appellant was entitled as a matter of right to a percentage of net return "equal to what it claims is the cost of money to it". (R. 139.) Therefore, we should now endeavor to discover just how appellant develops its claimed needed return of 9 percent.

The Commission, appellant argues, has always allowed a return to public utilities of about 15 percent more than the cost of money. It is true that the Commission frequently has employed this phrase in testing the reasonableness of rates accorded, but in so doing it has used the term with a meaning materially different from that which appellant here assumes. The Commission has simply meant thereby that the interest return upon all capital should at least equal the interest rate which the utility must pay currently for such capital as it obtains from the issuance of securities or other borrowed moneys bearing fixed interest charges. If this is done, the owners of the property may not only meet in full the annual charges upon borrowed funds, but may have for themselves in the way of dividends a rate of return upon their interest in the property of at least an equal rate.

Let us first see just how appellant arrives at its claimed cost of money. It begins (R. 477) with a $6,500,000.00 issue of 7 and 8 percent bonds in 1925. Against this there is charged not only the full discount and selling expense incurred, but also $904,000.00 to reflect 565,000 shares of stock donated to underwriters and agents. It then adds to the annual interest charge upon such bonds a sum sufficient to amortize not only the discount and expense incurred, but the whole of the stock donated at the same time. Such bonus stock remains outstanding today with exactly the same standing as other stock. When full provision is made for the retirement of the actual stockholders' interest in the bridge properties, there certainly is no occasion for the preferred treatment of this particular stock by providing for its amortization through the medium of cost of money and the consequent allowance of a higher rate of return.

Then, because in 1935 appellant refunded all such original bonds then outstanding by the issuance of $4,300,000.00 5½ percent bonds, it seeks to carry forward all such assumed unamortized costs on the earlier issue, including the bonus stock. Its resultant cost of money is 8.95 percent when such charges are amortized on a sinking fund basis and 9.45 percent when amortized on a straight line basis. (R. 477-478.) Although its calculation of the cost of the refunding bonds issued in 1935 shows that there then remained $440,521.88 designated as unamortized discount and expense on the original issue, the fact is, as the exhibit clearly shows, that the company had by that time actually written off $1,149,971.00 of the original discount

and expense incurred, including $904,000.00 of bonus stock. Thus, when excluding such stock, the company had already written off nearly twice the discount and expense of the original issue.

In order not to prolong the discussion of this issue, we may briefly show, by the table below, just what the company actually had to provide for annually when it refunded its securities in 1935, the figures being exactly the same as presented by appellant's witness except for the elimination of the bonus stock amortization:

Par Value of Bonds		$4,300,000.00
Discount and Selling Expense		194,027.70
Net Cash Proceeds		$4,105,972.30
Annual Charges:		
Interest (5½%) on par value		$ 236,500.00
Annual Accrual over 5.893 years to amortize:		
Discount and Expense	$194,027.70	
Premiums payable when called	53,875.00	
	$247,902.70	42,017.00
Total Annual Cost		$ 278,517.00
Effective Interest Rate on Net Proceeds		6.78%

The effective interest rate of 6.78 percent shown above, computed on the straight line basis, is the maximum annual rate in percent which can be said to represent the annual cost today of the company's bond money. And it provides that the accruals for such amortization be completed in less than six years rather than over the ten-year period during which some of the bonds will be outstanding.

Therefore, when the Commission said that it considered a rate of return of 7½ percent to be reasonable, and al-

lowed a return in excess thereof, it was not fixing rates below a reasonable rate of return or one confiscatory of appellant's property. And when the Commission said that in prescribing rates on the Carquinez Bridge it would give consideration to the effect upon the company's operations as a whole, it obviously did just that. It might be demonstrated by the very figures presented by appellant in its brief that its income from both bridges will yield in excess of 6.8 percent, not merely 5.6 percent as it asserts.

CLAIM OF WASTING ASSETS.

Still another argument is advanced by appellant in support of its claim of confiscation. It says that its bridges are "wasting assets", because its franchises were for only twenty-five years and its property therein will be lost in 1948 when those franchises expire. It says (Brief, p. 179) that the Commission failed to recognize such wasting assets.

Appellant's argument in this regard is false in theory and fact. In its brief (p. 185) it says that there is no support in the Commission's decision for the statement made by the State Court that "in computing the net annual receipts, allowances were made for depreciation reserves, including amortization of the entire investment before the expiration of the franchise period." The truth is that the Commission allowed in annual expense of operation every cent claimed by appellant for depreciation of its bridge property. Exhibit No. 134, above referred to and reproduced in part, plainly shows an item of expense for the

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"Amortization of Investment." And there was not the slightest misunderstanding as to just what that allowance provided for. "We computed the annuity", appellant's witness said (R. 499), "which, at 6 per cent, would amortize the investment throughout the life." It is exactly the method appellant has been using from the beginning for the retirement of the investment prior to the expiration of the bridge franchise, and that investment includes every dollar of both the indirect and the direct costs of the bridge. There are no other wasting assets in the structure.

What more, then, does the appellant ask for now? It is this. It says (Brief, p. 186) that to date there has been a deficiency of $2,404,600.00 in the dividends paid to stockholders under an 8 per cent dividend rate. What it seeks is the making good of such asserted deficiency, as well as to set aside enough to fully retire the bridge investment.

But appellant does not tell the Court that when it began the operation of its two bridges it was then burdened with a corporate debt of approximately two-thirds the total investment in them. It does not reveal that out of earnings and out of its depreciation reserve it had, by August 1, 1937, reduced its bonded debt to $3,544,000.00 (R. 212), or that it had seen fit to reacquire for cash a considerable amount of its own stock (R. 220), or to invest cash in the purchase of ferry properties. (R. 212.)

It seems obvious enough, therefore, that no matter how the stockholders of the corporation may ultimately fare, any deficiency in their dividends to date does not, of itself, evidence confiscatory earnings from the bridge property.

CONCLUSION.

It is submitted that appellant's claim of contract impairment is without support, either in theory or precedent. The claim is rested on an unreasonable construction given to the statutory provisions relied upon. It is contrary to the decisions of this Court. Not only is there a total absence of legislative intent to authorize a minimum rate contract, but there is an expressed constitutional prohibition against the creation of such a contract obligation.

Appellant's assertion that it has been deprived of its property without due process of law, likewise, is based upon claims of fact which are not sustained by the record. No error of fact or of law is revealed in the judgment of the Supreme Court of California.

The judgment below should be affirmed.

Dated, San Francisco, California,
April 14, 1939.

Respectfully submitted,

IRA H. ROWELL,

RODERICK B. CASSIDY,

GEORGE E. HOWARD,

Counsel for Appellee,

Railroad Commission of the State of California.

SUPREME COURT OF THE UNITED STATES.

No. 704.—OCTOBER TERM, 1938.

American Toll Bridge Co., Appellant, *vs.* Railroad Commission of the State of California, et al.	Appeal from the Supreme Court of the State of California.

[June 5, 1939.]

Mr. Justice BUTLER delivered the opinion of the Court.

This appeal is from a judgment of the highest court of the State upholding an order of the state railroad commission that reduces tolls for use of appellant's bridge across the Carquinez Straits between the counties of Contra Costa and Solano. Appellant contends that the order violates Art. I, § 10, of the Constitution; that the commission's procedure was repugnant to the due process clause of the Fourteenth Amendment, and that the order, in violation of that clause, prescribes rates that are confiscatory.

February 5, 1923, the board of supervisors of Contra Costa County, exerting power conferred by state legislation,[1] passed ordinance No. 171 granting to the Rodeo-Vallejo Ferry Company a franchise to construct and for 25 years to operate the Carquinez bridge. June 4, 1923, the same board granted to the Delta Bridge Corporation a like franchise for the construction and operation of a bridge across the San Joaquin River near Antioch, between the counties of Contra Costa and Sacramento. Each ordinance provides that, on the expiration of the franchise, the property rights, including title to the bridge, revert to the adjacent counties. Appellant became the owner of both franchises. The Antioch bridge was opened in January, 1926, and the Carquinez in May, 1927.

When the Carquinez bridge opened, the board of supervisors fixed tolls at 60 cents for automobiles and at 10 cents for each person in a vehicle or on foot.[2] That scale was in operation when

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[1] Political Code, §§ 2843, 2845, 2846, and 2872 (as amended May 8, 1923, Cal. Stats. 1923, p. 272).

[2] The franchise ordinance fixed these tolls at 75 cents and 15 cents.

the commission made the order in question which reduced these charges to 45 and 5 cents, respectively. Jurisdiction over toll bridges having been conferred upon it by a statute of 1937,[3] the commission in August of that year on its own motion commenced an investigation of all toll bridges. But, in October following, it commenced a separate proceeding solely to investigate reasonableness of Carquinez tolls. February 8, 1938, it announced its opinion and promulgated the order in question. Appellant obtained judicial review; the court upheld the order. 96 Cal. Dec. 367.

The statutory provisions authorizing the county board to grant the franchises, ordinance No. 171, and the grantees' acceptance constitute a contract between the parties. *Contra Costa Co.* v. *American Toll Bridge Co.*, (1937) 10 Cal. 2d 359. As to that, there is no controversy. But appellant contends that under the franchise it has a contract right that the bridge tolls shall not be reduced by the public authorities unless it shall first appear that they are yielding a rate in excess of 15 per cent upon the rate base specified by §§ 2845 and 2846, Political Code.

These sections provide:

§ 2845. "The board of supervisors granting authority to construct a toll-bridge . . . must at the same time: . . .

"2. Fix the amount of license tax to be paid by the person or corporation for taking tolls thereon, not less than three dollars nor over one hundred dollars per month, payable annually.

"3. Fix the rate of tolls which may be collected for crossing the bridge . . . which must not raise annually an income exceeding fifteen per cent on the actual cost of the construction or erection and maintenance of the bridge . . . for the first year, nor on the fair cash value together with the repairs and maintenance thereof for any succeeding year; . . . ."[4]

§ 2846. "The license tax and rate of toll fixed as provided in the preceding section must not be increased or diminished during the term of twenty years, at any time, unless it is shown to the satisfaction of the board of supervisors that the receipts from tolls in any one year is disproportionate to the cost of construction

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[3] Act of August 27, 1937, Cal. Stats. 1937, p. 2473.

[4] By Act of May 9, 1923, par. 3 was amended to read as follows: "Fix the rate of tolls which may be collected for crossing the bridge . . . which may raise annually an income not exceeding fifteen per cent on the actual cost of the construction or erection of the bridge . . . and such additional income as will provide for the annual cost of operation, maintenance, amortization and taxes of the bridge. . . ." Cal. Stats. 1923, p. 288.

or erection, or the fair cash value thereof, together with the cost of all necessary repairs and maintenance of the bridge. . . . The license tax fixed by the board of supervisors must not exceed ten per cent of the tolls annually collected."

The state court held that § 2846 contemplates increases as well as reductions, limited by the 15 per cent maximum, at any time the disproportion is shown to exist. It construed the language of that section to be inconsistent with the intent to contract that appellant shall have a 15 per cent return, if yielded by the tolls specified in the franchise. The opinion explains that: "Rather it is to be assumed that the legislature intended, not only to afford an adequate and proportionate return to the grantee, but that it also intended some measure of protection to the public's right to be charged not more than a reasonable toll for the use of the bridge. . . . In 1872, when section 2846 was enacted by the legislature, sufficient scope was allowed between both interests, public and private, to permit adequate elasticity in the exercise of the legislative rate-making function in the light of prevailing economic conditions. Such a statute does not savor of a contract obligation to the grantee. Its object was to delegate to and vest in the designated body the power to regulate tolls as circumscribed by the stated limitation."

Upon the issue whether the order is repugnant to the contract clause, "No State shall . . . pass any . . . Law impairing the Obligation of Contracts," this Court, while inclining to the state court's construction, will decide for itself whether, as claimed by appellant, the franchise by contract limits exertion of sovereign powers to regulate tolls. *Georgia Ry. Co. v. Decatur*, 262 U. S. 432, 438. *Rapid Transit Corp. v. New York*, 303 U. S. 573, 593. And if it plainly appears that it does, this Court will not hesitate so to adjudge. *Detroit United Ry. v. Michigan*, 242 U. S. 238, 251-253. *Cleveland v. Cleveland City Ry. Co.*, 194 U. S. 517, 524, 536. *Detroit v. Detroit Citizens Street Ry. Co.*, 184 U. S. 368, 382, 389. *Public Service Co. v. St. Cloud*, 265 U. S. 352. Compare *Georgia v. Chattanooga*, 264 U. S. 472, 480.

Upon an elaborate review of the California legislation relating to bridge tolls, appellant says that in the first period, 1850 to 1857, bridge franchises allowed owners to take only such tolls as the courts of sessions and, later, the county boards should fix annually; that in the second period, 1857 to 1864, tolls were limited to those fixed by county boards annually, subject to change by the legisla-

ture; that in the third period, 1862 to 1872, general statutes and special acts authorized such rates as the county boards should annually prescribe, declaring, however, that they should not be so low as to make income less than a specified percentage of a defined base. On that foundation, it maintains that there was an evolution of policy to grant to builders and operators of bridges contract rights as to tolls. In that light it examines the language of §§ 2845 and 2846 and concludes that the proper construction of the franchise in question is that unless the yield becomes in excess of 15 per cent the license tax must not be increased and the rate of toll must not be diminished.

We assume, without detailed examination, that the legislation so portrayed indicates that in the period next preceding 1872, when the provisions of § 2846 were enacted, the State had adopted the policy of safeguarding operators of toll bridges against rate reduction by county boards below specified levels. But that fact may not be employed to arrive at a construction not indicated by the language used. So far as concerns the point under consideration, the meaning of the statutory provision is plain. Section 2845 requires the county board, when granting the franchise, to fix the license tax within specified limits and a rate of toll, which must not raise annually an income exceeding 15 per cent of base. Section 2846 declares that the license tax and the rate of toll so fixed must not be diminished unless receipts are disproportionate to base. Thus plainly the commands are that at first the tolls must be fixed, but not to produce income above the 15 per cent specified, and that the tolls so fixed shall not be diminished unless yield is disproportionate to the defined base. Neither in text nor in reason is the "fifteen per cent" prescribed as maximum yield tied to, or made the test by which to ascertain whether receipts from tolls are, "disproportionate". We construe these statutory provisions to negative appellant's claim that by the franchise in question the State bargained away power to reduce tolls for use of the Carquinez bridge unless annual return becomes more than 15 per cent. See *e. g. Paducah* v. *Paducah Ry.*, 261 U. S. 267, 275; *Banton* v. *Belt Line Ry.*, 268 U. S. 413, 417-419; *Railroad Commission* v. *Los Angeles R. Co.*, 280 U. S. 145, 152, 155. The order is not repugnant to the contract clause.

Appellant claims that, in violation of the due process clause of the Fourteenth Amendment, the commission denied it a full and

fair hearing and failed adequately to find the facts. The commission initiated the proceeding, entitled "In the matter of the investigation upon the commission's own motion, into the rates, charges, contracts, classifications, rules and regulations of American Toll Bridge Company covering its operation of the toll bridge over the Carquinez Straits between the counties of Contra Costa and Solano"; gave appellant notice that the investigation would extend to tolls for use of that bridge; accorded it opportunity to introduce evidence and present its contentions; and received the evidence offered by it, 233 pages of the printed record and numerous exhibits. Appellant submitted the case for decision without making any request for findings and without argument, oral or written. The commission, without formal findings, filed its decision which, sufficiently to meet requirements of due process, indicates the facts on which it made the order.

Then appellant filed petition for rehearing. That document, including eight captions and 12 sub-captions and an exhibit, occupies 39 printed pages of the record.[5] It specifically sets forth

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[5] I. Introduction.
II. Exclusion of Antioch Bridge.
  1. The Facts.
  2. Inevitable Effect of Decision on Tolls of Carquinez Bridge, Antioch Bridge and Martinez-Benicio Ferry.
  3. The Decision is Contrary to the Commission's Own Traditions and Policy.
  4. The Commission's Action Deprives American Toll Bridge Company of Its Property Without Due Process of Law in Violation of Guarantees of the Federal and the State Constitutions.
III. Failure to Give Fair Return on Fair Value of Carquinez Bridge.
  1. Calculations of Commission in Computing Its Rate.
  2. Errors in Commission's Computations.
    (1) Rate Base.
    (2) Money Available for Return on Rate Base (under 50¢ toll).
  3. Return Under Rate Fixed by Commission.
  4. In View of the Cost of Money to American Toll Bridge Company, a Return of Only 6.6% or 6.9% on the Fair Value of the Carquinez Bridge Would be Confiscatory.
  5. Summary as to Fair Return, Carquinez Bridge.
IV. Failure to Give Fair Return on Fair Value of Carquinez and Antioch Bridges.
  1. Rate Base.
  2. Return Under Rate Fixed by Commission.
  3. Effect of Commission's Decision Would be to Confiscate Property of American Toll Bridge Company in Both Carquinez and Antioch Bridges.
V. Under Commission's Tolls American Toll Bridge Company Would be Unable to Meet Its Requirements to Its Bondholders and Stockholders.
VI. Impairment of Contract Obligations.
VII. False Analogy With Publicly Owned and Operated San Francisco Bay Bridges.
VIII. Violation of Constitutional and Statutory Rights.

the grounds on which appellant claimed the decision to be unlawful. These include the commission's determination of the various classes of facts usually considered in cases in which prescribed rates are challenged as confiscatory. The petition contains no hint of claim that the commission denied appellant procedural due process. Nor was that specified in the petition for judicial review. *Morgan* v. *United States*, 304 U. S. 1, on which appellant relies, was decided after filing of that petition and before argument in the California court. That court rightly held it not in point.

Appellant also claims that the commission denied it procedural due process by excluding the Antioch bridge rates from the proceeding. It moved to include with this proceeding an investigation of the Antioch bridge tolls. In support of the motion, it suggested that the bridges are part of a single system but compete with each other; that operations of the Antioch are less satisfactory financially than those of the Carquinez; and that reduction of Carquinez tolls would force reduction of Antioch tolls.

In the first instance, at least, determination of the proper unit for rate making was for the commission. The Antioch bridge is not used or useful to render any service covered by the Carquinez tolls; appellant's duty to operate either bridge is independent of its obligation to operate the other. The record discloses no basis on which it reasonably may be held that by limiting the investigation to the Carquinez tolls the commission abused its discretion, and clearly there is no foundation for the claim that in excluding the Antioch the commission denied appellant procedural due process. See *Gilchrist* v. *Interborough Co.*, 279 U. S. 159, 206, 209. *Wabash Valley Elec. Co.* v. *Young*, 287 U. S. 488, 495-8. *Florida Power & Light Co.* v. *City of Miami*, 98 F. 2d 180. *International Ry. Co.* v. *Prendergast*, 1 F Supp. 623. Cf. *Coney* v. *Broad River Power Co.*, 171 S. C. 377.

There is no foundation for the claim that the commission's procedure violated the due process clause of the Fourteenth Amendment.

There remains for consideration the contention that the prescribed rates are confiscatory. The burden is on appellant to show that enforcement of the order will compel it to furnish the service covered by the reduced rates for less than a reasonable rate of re-

turn on the value of the property used, at the time it is being used, for that service. And, in the absence of clear and convincing proof that the reduced tolls are too low to yield that return, it may not be adjudged that the State by enforcement of the measure complained of will deprive appellant of its property without due process of law. *Chicago &c. Ry. Co.* v. *Wellman*, 143 U. S. 339, 344-345. *San Diego Land & Town Co.* v. *Jasper*, 189 U. S. 439, 441, 446. *Knoxville* v. *Water Co.*, 212 U. S. 1, 8, 16. *The Minnesota Rate Cases*, 230 U. S. 352, 433, 452. *Brush Elec. Co.* v. *Galveston*, 262 U. S. 443, 446. *Aetna Insurance Co.* v. *Hyde*, 275 U. S. 440, 448.

The terms of the order must first be given attention. It directs appellant to change the items of its schedule of charges, reading as follows: "Passengers (7 years of age and older) on foot or in vehicles . . . $.10. Auto only . . . .60" so as to read: "Passengers (7 years of age and older) on foot or in vehicles . . . .05. Auto only . . . .45". Thus, the order extends only to automobiles and passengers. The Carquinez franchise specifies, until otherwise ordered by the commission, tolls applicable to other classes of traffic crossing the bridge, namely, bicycles, carts and wagons, commercial or delivery automobiles and motor trucks, ditchers, harvesters, etc., cattle and stock, motor stages to which commutation rates are applied when operated as specified, freight, hearses, horses, motorcycles, and trailers.

Appellant fails to establish, by allocation or apportionment to the traffic covered by the tolls so reduced, the operating expenses, cost of depreciation, taxes, and contributions to the sinking fund for amortization of investment that are fairly attributable to the service covered by the order; it also fails to establish the amount of property value that is justly assignable to that traffic. Obviously, the return to be yielded by the reduced tolls cannot be found without comparison of the revenues to be derived from the service with the amounts of operating expenses and other charges rightly to be made against them. Inadequacy of revenues from all traffic does not tend to show that the rates on automobiles and persons prescribed by the commission's order are too low. *The Minnesota Rate Cases, supra*, 452-453. *B. & O. R. Co.* v. *United States*, 298 U. S. 349, 372, 378, 381. It follows that appellant is not entitled to a decree that the order is confiscatory.

More need not be written to dispose of the issues presented in this case. But in view of appellant's earnest contentions, it is not in-

appropriate to say that the record, considered in the light of its argument, fails to show that the rate reduction will so lessen revenues from the Carquinez bridge that there will remain less than sufficient, under the due process clause, to constitute just compensation for its use—a reasonable rate of return on the value of the bridge property.

Judgment affirmed.

Mr. Justice BLACK, Mr. Justice FRANKFURTER and Mr. Justice DOUGLAS concur in the result.

A true copy.

Test:

Clerk, Supreme Court, U. S.